INTERPRETIVE NOTES AND DECISIONS

I. IN GENERAL

6. Particular acts constituting crime

No violation of duties imposed by 18 USCS § 874 occurred where laboratories receiving fees for medical services shared fee with physician who referred work to lab. United States v Porter (1979, CA5 Fla) 591 F2d 1048.

Contractor's demand of employees that they make payment to him of portion of wage is unlawful under Federal Anti-Kickback Act (18 USCS § 874), and warrants debarment of contractor; contractor's defense that employees voluntarily made payments pursuant to oral agreement involving advancement of credit for purchase of necessary tools is rejected since contractor did not begin demanding repayment by employees until wage increase required under contract period. Estes & Estes Plumbing (1984, HUD BCA) 84-2 BCA ¶ 17241.

Contractor violated Copeland Act's prohibition against kickbacks when his employees "voluntarily" returned part of their paychecks based on contractor's claim that it could not afford to pay them full wages and its promise to pay them bonus instead. Re Groves Construction Co. (1989, DOL/ALJ) CCH Wage-Hour Admin Rulings ¶ 31627.

§ 875. Interstate communications

(a) Whoever transmits in interstate or foreign commerce any communication containing any demand or request for a ransom or reward for the release of any kidnapped person, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

(b) Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.

(c) Whoever transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

(d) Whoever, with intent to extort from any person, firm, association, or corporation, any money or other thing of value, transmits in interstate or foreign commerce any communication containing any threat to injure the property or reputation of the addressee or of another or the reputation of a deceased person or any threat to accuse the addressee or any other person of a crime, shall be fined not more than $500 or imprisoned not more than two years, or both.

(As amended Nov. 10, 1986, P. L. 99-646, § 63, 100 Stat. 3614.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1986, Act Nov. 10, 1986, in subsecs. (a)-(d), inserted "or foreign".

CROSS REFERENCES

As to sentencing guidelines for this section, see the appendix entitled "Sentencing Guidelines for U.S. Courts" at the end of Title 18.

RESEARCH GUIDE

Am Jur:

31A Am Jur 2d, Extortion, Blackmail, and Threats §§ 21, 64.

31A Am Jur 2d, Extortion, Blackmail, and Threats § 64.

Forms:

15 Federal Procedural Forms L Ed, Telecommunications § 62:1.

Annotations:

Forum state's jurisdiction over nonresident defendant in action based on obscene or threatening telephone call from out of state. 37 ALR4th 852.

State criminal prosecutions of union officer or member for specific physical threats to employer's property or person, in connection with labor dispute. 43 ALR4th 1141.

Texts:

Bailey and Rothblatt, Defending Business and White Collar Crimes (2d Ed), Ch. 26, Extortion and Related Offenses.

INTERPRETIVE NOTES AND DECISIONS

I. IN GENERAL

3. Relationship with other laws

State offense of attempted extortion is properly assimilated into federal prosecution under 18 USCS § 13 where proscribed conduct is not same as that punished under 18 USCS § 873, because there has been no threat to expose violation of federal law, or under 18 USCS § 875, because threat has not been transmitted in interstate commerce. United States v Teplin (1985, CA4 Va) 775 F2d 1261.

Defendant was entitled to have his mental defect evidence considered on issue of whether he possessed mental capacity to form specific intent to threaten individuals and to transmit his threats in violation of 18 USCS §§ 875 and 876, since diminished capacity defense under 18 USCS § 17 is relevant where showing of specific intent is required. United States v Twine (1988, CA9 Wash) 853 F2d 676.

5. Transmission in interstate commerce

Ransom demand transmitted from Mexico to Texas is not interstate crime under 18 USCS § 875, since transmission was in foreign commerce, not in interstate commerce. United States v Lopez-Flores (1984, WD Tex) 592 F Supp 1302.

6. Knowledge, intent

When considered in light most favorable to government, evidence that man who sought twenty-million dollar loan from life insurance company in order to buy ranch, and who on several occasions threatened violence to company and company offices if loan was not approved, presented issue of intent to extort for jury determination. United States v Cohen (1984, CA8 Neb) 738 F2d 287.

Showing of "intent to threaten" required by 18 USCS § 875 and § 876 is showing of specific intent. United States v Twine (1988, CA9 Wash) 853 F2d 676.

7. Particular statements constituting threat

Interstate telephone communication which defendant made to victim for purpose of keeping victim quiet after he